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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 17-15]

RIN 1515-AE27

Removing the Prohibition on the Importation of Jadeite or Rubies Mined or Extracted from Burma, and Articles of Jewelry Containing Jadeite or Rubies Mined or Extracted from Burma

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to remove the provision relating to the prohibition on the importation of jadeite or rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma. This reflects the termination of all Burmese sanctions by Executive Order 13742, of October 7, 2016.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

On July 28, 2003, the President signed into law the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108-61) (the “BFDA”) to sanction the military junta then ruling Burma. Among other provisions, the BFDA required the imposition, subject to annual renewal, of a ban on the importation into the United States of any article that is a product of Burma. To implement the BFDA, the President issued Executive Order (“E.O.”) 13310 (68 FR 44853, July 30, 2003), which prohibited, among other things, the importation into the United States of any article that is a product of Burma.

On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (Pub. L. 110-286) (the “JADE Act”), which, among other things, amended the BFDA to require a prohibition on the importation into the United States of jadeite or rubies mined or extracted from Burma and articles of jewelry containing such jadeite or rubies. Section 12.151 of the CBP regulations (Title 19, Code of Federal Regulations (“CFR”) section 12.151) reflects this prohibition on the importation of jadeite or rubies mined or extracted from Burma and articles of jewelry containing such jadeite or rubies.

The BFDA, as amended by the JADE Act, required annual renewal, which did not occur in 2013. As a result, the prohibition on the importation of jadeite or rubies mined or extracted from Burma and articles of jewelry containing jadeite or rubies mined or extracted from Burma expired on July 28, 2013. On August 6, 2013, the President signed

E.O. 13651, titled “Prohibiting Certain Imports of Burmese Jadeite and Rubies” (78 FR 48793), which revoked the sections of E.O. 13310 imposing a prohibition on the importation into the United States of any article that is a product of Burma. As a result, there was no longer a general ban on importing into the United States any article that is a product of Burma; however, the specific ban of jadeite and rubies mined or extracted from Burma as well as articles of jewelry containing jadeite or rubies mined or extracted from Burma was reinstituted by E.O. 13651. Consequently, on August 23, 2016, CBP published a final rule in the *Federal Register* (81 FR 57456) amending the CBP regulations to update the relevant provisions to reflect the import prohibitions set forth in E.O. 13651.

II. Termination of the Burmese Sanctions

On October 7, 2016, the President signed E.O. 13742, titled “Termination of Emergency With Respect to the Actions and Policies of the Government of Burma” (81 FR 70593), which revoked, among others, E.O. 13310 and 13651. The President found that the situation that gave rise to the declaration of a national emergency with respect to the actions and policies of the Government of Burma has been significantly altered by Burma’s substantial advances in promoting democracy, including historic elections that resulted in the formation of a democratically elected, civilian-led government; the release of many political prisoners; and greater enjoyment of human rights and fundamental freedoms, including freedom of expression and freedom of association and peaceful assembly. As a result, President Obama revoked all the Burmese sanctions. This was accomplished by revoking, among others, E.O. 13651, which prohibited the importation of any jadeite or rubies mined or extracted from Burma as well as any articles of jewelry

containing jadeite or rubies mined or extracted from Burma. As of October 7, 2016, CBP is no longer enforcing this import prohibition. To reflect this, CBP is removing the relevant provision, 19 CFR 12.151, from the CBP regulations.

III. Statutory and Regulatory Requirements

A. Inapplicability of Public Notice and Delayed Effective Date Requirements

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), rulemaking generally requires prior notice and comment, and a 30-day delayed effective date, subject to specified exceptions. This document amends the regulations to remove 19 CFR 12.151 to reflect Executive Order 13742 of October 7, 2016, which terminated the import prohibitions on Burmese articles. Since this document removes a regulation that is no longer applicable or enforced by CBP in light of the Executive Order, CBP has determined it is a nondiscretionary action and that, pursuant to the provisions of 5 U.S.C. 553(b)(B), prior public notice and comment procedures on this regulation are impracticable, unnecessary, and contrary to the public interest and that there is good cause for this rule to become effective immediately upon publication. For these reasons, pursuant to the provision of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

B. Executive Orders 13563 and 12866: Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. As a notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below.

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

2. The specific authority citation for § 12.151 is removed.

§ 12.151 [Removed and Reserved]

3. Remove and reserve § 12.151.

DATE: October 25, 2017

Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Approved:

Timothy E. Skud
Deputy Assistant Secretary of the Treasury
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